IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 51 of 1996.

Judgement reserved on: 12.6.2007

Date of decision: 18.6.2007

Kamlesh Kumari and another **…….Appellants**

Vs.

Piaro Devi & Ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?*[1] *Yes

For the Appellants : Mr. N.K. Thakur, Advocate.

For the Respondents : Mr.K.D. Sood, Advocate.

Kuldip Singh, Judge.

The plaintiffs are in appeal against judgment, decree dated 31.8.1995 passed by learned District Judge, Una in Civil Appeal No.156 of 1990, allowing the appeal of the original defendant and dismissing the suit of the plaintiffs. The parties are referred in the same manner as in the trial Court.

The plaintiffs filed a suit for declaration that they are owner in possession of land comprised in Khewat No.14, Khatauni No.15, Khasra No.178, measuring 5 Kanals 1 marla vide jamabandi for the year 1982-83 , situated in village Bagga Barot, Tehsil Amb, District Una. The entry of tenant at-will in favour of defendant in Misal Hakiat is wrong and illegal as Assistant Consolidation Officer (ACO) had no jurisdiction to make this entry in favour of the defendant . The

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

Consequential relief of permanent injunction restraining the defendant from interfering in possession of the plaintiffs has also been prayed. In the alternative, prayer for possession of the suit land has also been made.

The further case of the plaintiff is that they are in possession of the suit land and entry of defendant as tenant on the suit land on the basis of order of ACO, Gagret was not to the knowledge of plaintiffs. The suit land was given to the plaintiffs by the Consolidation Department in partition and they are in actual cultivating possession of the suit land. The defendant was never inducted as tenant by the plaintiffs over the suit land. The defendant has no right, title or interest in the suit land. The defendant on the basis of wrong entry of tenancy of the suit land and subsequent mutation of conferment of proprietary rights of the suit land in his favour was threatening to take forcible possession of the suit land from the plaintiffs. On these grounds the plaintiffs filed the suit.

The suit was contested by the original defendant by filing written statement. He took preliminary objections of maintainability , plaintiffs are not in possession of the suit land, estoppel, limitation, lack of cause of action, Civil Court has no jurisdiction to try the suit. On merits, it was submitted that defendant was earlier tenant at Will on payment of rent but after coming into force of H.P. Tenancy and Land Reforms Act, 1972 (for short ‘Act’) has become owner of the suit land. The wrong entries were corrected during the consolidation operation in presence of the plaintiffs. The mutation conferring proprietary rights upon the defendant has also been sanctioned in the

presence of the plaintiffs. The trial Court on 29.8.1990 decreed the suit. The defendant filed appeal which has been allowed by learned District Judge on 31.8.1995 and dismissed the suit of the plaintiffs. The plaintiffs thus are in appeal in this Court. The original defendant died during the pendency of appeal and his legal representatives have been brought on record.

The appeal has been admitted on following substantial questions of law:-

1. *Whether the learned lower appellate court is legally right in admitting in-admissible document Ex.D-1?*
2. *What is the effect of mis-construing and misinterpreting the alleged statement Ex.D-1?*
3. *Whether the impugned judgment and decree is the result of mis-understanding and mis-construing the documents Ex.P-6,Ex. P-7 and Ex. P-10?*
4. *Whether the learned A.C.O. is competent to record the entry of tenancy not being Land Reforms Officer under the H.P,. Tenancy and Land Reforms Act?*
5. *What is the effect of impugned entry in the facts and circumstances of the case?*

I have heard the learned counsel for the parties and have also gone through the record.

The learned counsel for the plaintiffs-appellants has submitted that the Lower Appellate Court has erred in dismissing the suit. The entry showing the defendant as tenant on the suit land was wrong and therefore, conferment of proprietary rights on defendant of the suit land was wrong illegal and for determination of this question

the Civil Court has jurisdiction. The lower appellate Court has erred in considering inadmissible document Ex.D-1 and misinterpreted Ex.P-6, Ex.P-7 and Ex.P-10. The learned counsel for the legal representatives of original defendant has supported the impugned judgment, decree.

Substantial Questions of Law No.1to 5

All these substantial questions of law are being disposed of collectively in view of the fact that these are interconnected.

The Consolidation Officer, on the basis of joint statement Ex.D-1 of both the plaintiffs vide order dated 7.11.1981 also exhibited Ex.D-1, in presence of plaintiffs ordered entry of defendant as tenant under plaintiffs in the record. The mutation No.85 Ex.D-4 conferring proprietary rights on original defendant was attested on 6.2.1983 The submissions of the learned counsel for the plaintiffs that defendant was not a tenant on the suit land and proprietary rights of the suit land were wrongly conferred on defendant has no force.

PW-1 Kamlesh Kumari has stated that ACO got her signatures on some papers by saying that those were required for recording her presence. In cross-examination she has admitted her signatures on statement Ex.D-1. She is matriculate. She has also admitted signatures of her sister plaintiff No.2 Balwant Devi on Ex.D-1. She has stated that ACO was not inimical to her. The plaintiffs admitted original defendant as their tenant during consolidation proceedings vide their statement Ex.D-1. The joint statements of plaintiffs Ex.D-1 along with order dated 7.11.1981 Ex.D-1 prove the fact that defendant was their tenant and therefore,

proprietary rights were conferred in favour of defendant and mutation Ex.D-4 of conferring proprietary rights was also attested. At the time of attestation of mutation Ex.D-4 plaintiff No.1 was also present.

The Ex.P-6 is the jamabandi for the years 1976-77, Ex.P-7 is the jamabandi for the years 1982-83, Ex.P-10 is the Misal Hakiat. In Ex.P-10 defendant has been shown as tenant on Khasra No.178 under plaintiffs. It is admitted case of the parties that proprietary rights were conferred in favour of the defendant Udham Singh of the suit land and mutation Ex.D-4 to this effect was also attested on 6.2.1983. In ***Chuhniya Devi vs. Jindu Ram 1991 (1) Sim L.C. 223***. The question before the full Bench of this Court was as follows:-

"These appeals have come up before this Bench for an answer the question whether the civil court has jurisdiction, in respect of an order,

(a) *made by the competent authority under the H.P. Land Revenue Act, 1954, and*
(b) *of conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972,*

which has not been assailed under the provisions of these Acts.

The full Bench has given the answer in para-64 of the judgment as follows:-

> *"We have attempted to do it in the present case and have come to the conclusion that the Legislature has envisaged a complete Code in the provisions of the H.P. Tenancy and Land Reforms Act, 1972, inter alia, for effectuating purpose of land reforms and has ruled out determination of any question connected therewith by the civil court.*

The Answer

Our answer, therefore, is :

(a) That an order made by the competent authority under the H.P. Land Revenue Ac, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of section 37(3) and section 46 of that Act; and

(b) The civil court has no jurisdiction to go into any question connected with the conferment of proprietary rights under section 104 of the H.P. Tenancy and Land Reforms Act, 1972, except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with".

The submission of learned counsel for the plaintiffs that in the present case, the Civil Court has jurisdiction to go into the question of conferment of proprietary rights as according to him original defendant was not a tenant on the suit land under plaintiffs and therefore, proprietary rights could not have been conferred on him and proprietary rights conferred on him have no basis. He has taken the support of judgment ***Babu Ram vs. Pholo Ram 1991 (2) SLC 211.*** This submission of learned counsel for the plaintiffs has no force. It has been proved on record as a fact that the defendant Udham Singh was a tenant of plaintiffs on the suit land and the plaintiffs admitted his status as tenant in their joint statement Ex.D-1. On the basis of their statements ACO ordered entry of tenancy of defendant Udham Singh on suit land under plaintiffs. Thereafter proprietary rights were conferred in favour of Udham Singh on the

suit land. The facts admitted need not be proved. Once the plaintiffs admitted Udham Singh to be their tenant, no further proof was required regarding the tenancy of Udham Singh on the suit land, therefore, entry of Udham Singh as tenant on the suit land is not without foundation rather it is based on the admission of the plaintiffs. In Babu Ram case (supra) the plaintiff of that case claimed decree for declaration that he was tenant of suit land under defendant. In that suit question of conferment of proprietary rights or order conferring proprietary rights was not involved, on those facts this Court held that Civil Court has jurisdiction to try the suit. The facts in the present case are different. The plaintiffs in the present case have admitted that proprietary rights were already conferred in favour of defendant Udham Singh before the filing of the suit

In ***Shanker vs. Smt. Rukmani and others 2003 (1) S.L.J.283,*** a Division Bench of this Court has held as follows:-

> *P-9 "After analysing the judgment in Chuhniya Devi vs. Jindu Ram's case (supra), we have no doubt that the jurisdiction of the Civil Court is barred under the Act if the dispute pertaining to the relationship of landlord and tenant arises during the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. But if the dispute of landlord and tenant arises*

independent of the proceedings under the Act, the Civil Court has the jurisdiction".

In view of ***Chuhniya Devi*** case (supra) and ***Shanker*** case (supra), the jurisdiction of the Civil Court to look into the order of conferment of proprietary rights is barred.

The plaintiffs have admitted conferment of proprietary rights of suit land, therefore, the Civil Court cannot go into the question of validity of conferment of proprietary rights in favour of original defendant Udham Singh. The learned District Judge has rightly appreciated the material on record. The plaintiffs have failed to make out any case of interference. It has not been established by plaintiffs how Ex.D-1 is inadmissible in evidence and Ex.P-6, Ex.P-7 and Ex.P-10 have been misconstrued, misinterpreted by lower appellate Court. It has also been established how ACO was not competent to order entry of tenancy of defendant Udham Singh during consolidation proceedings under plaintiffs. The entry of defendant Udham Singh as tenant under plaintiffs was made by ACO under lawful order. The substantial questions of law 1 to 5 are decided against the plaintiffs and in favour of the legal representatives of original defendant.

The result of above discussion, the appeal is dismissed with no order as to costs.

(Kuldip Singh)
Judge.

June 18, 2007
(sks)